

ASSEMBLY BILL

No. 2010

Introduced by Assembly Member Gray

February 20, 2014

An act to amend Section 23104.2 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2010, as introduced, Gray. Alcoholic beverages: beer returns: product quality.

Existing law, the Alcoholic Beverage Control Act, generally permits a wholesaler or manufacturer to accept the return of beer from a retailer only if the beer is returned in exchange for the identical quantity and brand of beer. Existing law permits a credit memorandum to be issued when a package is broken or damaged when the return and corrections are completed within 15 days, as specified. Existing law provides exceptions from this limitation, including permitting the return of beer by a retailer to a seller, and by a seller to a manufacturer or importer, if the beer is recalled or presents a health or safety issue, as provided.

This bill would extend the exception provided for beer that is recalled or presents a health and safety issue, as described above, to beer that has product quality issues.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23104.2 of the Business and Professions
- 2 Code is amended to read:

1 23104.2. (a) Subject to the exceptions specified in subdivision
2 (b), a retail licensee may return beer to the wholesaler or
3 manufacturer from whom the retail licensee purchased the beer,
4 or any successor thereto, and the wholesaler, manufacturer, or
5 successor thereto may accept that return if the beer is returned in
6 exchange for the identical quantity and brand of beer. No
7 wholesaler or manufacturer, or any successor thereto, shall accept
8 the return of any beer from a retail licensee except when the beer
9 delivered was not the brand or size container ordered by the retail
10 licensee or the amount delivered was other than the amount
11 ordered, in which case the order may be corrected by the wholesaler
12 or manufacturer who sold the beer, or any successor thereto. If a
13 package had been broken or otherwise damaged prior to or at the
14 time of actual delivery, a credit memorandum may be issued for
15 the returned package by the wholesaler or manufacturer who sold
16 the beer, or any successor thereto, in lieu of exchange for an
17 identical package when the return and corrections are completed
18 within 15 days from the date the beer was delivered to the retail
19 licensee.

20 (b) Notwithstanding subdivision (a), a wholesaler or
21 manufacturer, or any successor thereto, may accept the return of
22 beer purchased from that wholesaler, manufacturer, or successor
23 thereto, as follows:

24 (1) (A) From a seasonal or temporary licensee if at the
25 termination of the period of the license the seasonal or temporary
26 licensee has beer remaining unsold, or from an annual licensee
27 operating on a temporary basis if at the termination of the
28 temporary period the annual licensee has beer remaining unsold.

29 (B) For purposes of subparagraph (A), an annual licensee shall
30 be considered to be operating on a temporary basis if he or she
31 operates at seasonal resorts, including summer and winter resorts,
32 or at sporting or entertainment facilities, including racetracks,
33 arenas, concert halls, and convention centers. Temporary status
34 shall be deemed terminated when operations cease for 15 days or
35 more. No wholesaler or manufacturer, or successor thereto, shall
36 accept the return of beer from an annual licensee considered to be
37 operating on a temporary basis unless the licensee notifies that
38 wholesaler or manufacturer, or successor thereto, within 15 days
39 of the date the licensee's operations ceased.

1 (2) (A) Subject to subparagraph (B), a wholesaler or
2 manufacturer, or any successor thereto, may, with department
3 approval, accept the return of a brand of beer discontinued in a
4 California market area or a seasonal brand of beer from a retail
5 licensee, provided that the beer is exchanged for a quantity of beer
6 of a brand produced or sold by the same manufacturer with a value
7 no greater than the original sales price to the retail licensee of the
8 returned beer. For purposes of this subparagraph, “seasonal brand
9 of beer” means a brand of beer, as defined in Section 23006, that
10 is brewed by a manufacturer to commemorate a specific holiday
11 season and is so identified by appropriate product packaging and
12 labeling.

13 (B) A discontinued brand of beer may not be reintroduced for
14 a period of 12 months in the same California market area in which
15 a return and exchange of that beer as described in subparagraph
16 (A) has taken place. A seasonal brand of beer may not be
17 reintroduced for a period of six months in the same California
18 market area in which a return and exchange of that beer as
19 described in subparagraph (A) has taken place.

20 (c) Notwithstanding subdivision (a), a wholesaler or
21 manufacturer, or any successor thereto, may accept the return of
22 beer purchased from that wholesaler or manufacturer, or any
23 successor thereto, by the holder of a retail license following the
24 revocation of, suspension of, voluntary surrender of, or failure to
25 renew the retail license.

26 (d) A wholesaler or manufacturer, or any successor thereto, may
27 credit the account of the retailer identified in subdivision (c) in an
28 amount not to exceed the original sales price to the retailer of the
29 returned beer, provided that the beer has been paid for in full.

30 (e) Notwithstanding the 15-day time limit for the return of beer
31 described in subdivision (a), beer that is recalled or that is
32 considered by a manufacturer, importer, or governmental entity
33 to present health-~~or~~, safety, *or product quality* issues if distributed,
34 offered for sale, or sold in the state may be accepted for return at
35 anytime from a retailer and be picked up by the seller of beer. The
36 seller of beer may exchange the returned beer for identical product,
37 if safe inventory *or quality-controlled product inventory* is
38 available, issue a deferred exchange memorandum showing the
39 beer was picked up and is to be replaced when inventory is
40 available, or issue a credit memorandum to the retailer for the

1 returned beer. The seller of beer may exchange with the
2 manufacturer or importer the returned beer and the seller of beer's
3 inventory that was recalled or considered to present health-~~or~~,
4 safety ~~issues~~, *or product quality issues. The returned beer may be*
5 *exchanged* for identical product, if safe inventory *or*
6 *quality-controlled product inventory* is available, or the seller of
7 beer ~~shall~~ *may elect to receive either* a refund from or be issued a
8 credit memorandum by the manufacturer or importer for the
9 returned beer and seller of beer's inventory that was recalled or
10 considered to present health-~~or~~, safety, *or product quality* issues.

11 (f) Notwithstanding subdivision (a), a licensee may accept the
12 return of unsold and unopened beer from an organization that
13 obtained a temporary license pursuant to Section 24045 or 24045.1.
14 The licensee may credit the account of the organization in an
15 amount not to exceed the original sales price of the returned beer,
16 provided that the beer has been paid for in full.

17 (g) (1) Notwithstanding subdivision (a), an on-sale retail
18 licensee that purchases beer for sale at an event for which a catering
19 authorization is issued by the department pursuant to Section 23399
20 may return the unused and unopened beer to the original selling
21 licensee at the conclusion of the catered event or upon expiration
22 of the catering authorization, provided the beer was purchased for
23 use or sale only at that event and the on-sale retail licensee does
24 not also provide any beer for use or sale at the event from its
25 permanent licensed premises. The on-sale retail licensee holding
26 the catering authorization shall record and maintain a record of
27 the inventory of all unused and unopened beer to be returned at
28 the conclusion of the catering event. The original selling licensee
29 shall prepare an invoice to reflect the returned beer that shall
30 reference the original sales invoice and shall provide the on-sale
31 retail licensee holding the catering authorization with a copy of
32 the invoice.

33 (2) Any beer returned pursuant to this subdivision must be
34 returned to the original selling licensee at the conclusion of the
35 catered event or upon expiration of the catering authorization. The
36 original selling licensee may credit the account of the on-sale retail
37 licensee in an amount not to exceed the original sales price of the
38 returned beer, provided the beer has been paid for in full.

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